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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,645	01/24/2002	Anne Gillian Welch	9013.31	8639
20792 7590 08/24/2007 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER BOESEN, AGNIESZKA	
			ART UNIT 1648	PAPER NUMBER
			MAIL DATE 08/24/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/889,645	Applicant(s) WELCH ET AL.	
	Examiner Agnieszka Boesen	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-16,25,28,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-16,25,28,31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Upon further consideration the finality of the previous Office Action of April 30, 2007 is withdrawn. Prosecution is reopened to make following rejections. Any inconvenience is regretted.

The Amendment filed July 13, 2007 is acknowledged and entered. Claim 1 has been amended. Claims 17, 18, 26, and 27 have been canceled. Claims 1, 3, 6-16, 25, 28, 31, and 32 are under examination. Rejections of canceled claims are moot.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Rejection of claim 1 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement is **maintained** for reasons of record (see Office action of July 5, 2006).

In the response filed July 12, 2007, Applicant indicates that the rejection been indicated as withdrawn. This is not the case, rather, the rejection has been maintained in this action as in previous actions. Failure to respond to a rejection is grounds for not entering a response. Should Applicant fail to address this rejection in their next response, the response will not be entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Rejection of claims 1, 3, 6-16, 25, 28, 31, and 32 under 35 U.S.C. 103(a) as being unpatentable over Ostreicher et al. (GB 2 045 828 A, 1980) in view of Nebe (WO 96/05846, IDS Paper No. 1) as evidenced by Encyclopedia Britannica (britannica.com/eb/article-9030299/diatomaceous-earth, access 10/5/2006) **is maintained.**

Applicant amended the independent claim 1 to recite the limitation of canceled claim 23 “wherein the depth filter is a single use filter”. This newly added limitation “wherein the depth filter is a single use filter” does not provide novelty to the claimed invention because it would have been obvious to the ordinary artisan to use a single use filter in the method of removal of abnormal infective prion proteins from an aqueous liquid product. It is well known in the art that handling biological products, like for example blood products is performed using single use equipment, for the purpose of avoiding contamination and for the purpose of efficiency of the performed filtration. The ordinary artisan would immediately envision that filtration of liquids containing natural products contaminated with abnormal prion protein should be performed using a single use filter. Thus, in view of the above the rejection is maintained.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostreicher et al. (GB 2 045 828 A, 1980) in view of Nebe (WO 96/05846, IDS Paper No. 1) as evidenced by Encyclopedia Britannica (britannica.com/eb/article-9030299/diatomaceous-earth, access 10/5/2006).

Claim 1 from which claim 28 depends, stands rejected as discussed on the record in the Office action of October 13, 2006. Claim 28 recites a limitation of "wherein the filter is pretreated with ethanol."

The references by Ostreicher et al. and Nebe do not teach treating the filter with ethanol. However it would have been within the skill of the ordinary artisan to pretreat the filter of Ostreicher et al. and Nebe with ethanol for subsequent filtration and removal of abnormal infective prion proteins from aqueous liquid. The skilled artisan would have been motivated to pretreat the filter with ethanol prior to removal of abnormal infective prion proteins from aqueous liquid, because the artisan would not desire to contaminate the product of filtration with pathogenic organisms. Ethanol is typically used for disinfection purposes. In the case when the aqueous liquid is blood for example, and one intends to use the filtrated blood for the purpose of blood transfusion, one would be motivated to disinfect the filter with ethanol. Thus the present limitation would have been obvious to the one of ordinary skill in the art at the time when the invention was made.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnieszka Boesen whose telephone number is 571-272-8035. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

Agnieszka Boesen, Ph.D.

/Stacy B. Chen/ 8-22-2007
Primary Examiner, TC1600